

# HOUSE BILL REPORT

## EHB 1894

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**As Passed House:**

March 12, 1999

**Title:** An act relating to industrial insurance benefit errors.

**Brief Description:** Correcting industrial insurance benefit errors.

**Sponsors:** Representative Conway.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/24/99, 2/25/99 [DP].

**Floor Activity:**

Passed House: 3/12/99, 95-0.

**Brief Summary of Bill**

- Allows an injured worker to request adjustment of benefits within one year of an incorrect payment if the Department of Labor and Industries or a self-insured employer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 6 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; Wood, Democratic Vice Chair; Hurst; McIntire and McMorris.

**Minority Report:** Do not pass. Signed by 2 members: Representatives B. Chandler, Republican Vice Chair and Lisk.

**Staff:** Chris Cordes (786-7103).

**Background:**

The industrial insurance law permits the Department of Labor and Industries to recover benefits that are overpaid to injured workers because of clerical error,

mistaken identity, innocent misrepresentation, or similar circumstances. The department must make a claim for repayment within one year of making the overpayment or the claim is deemed waived.

This statute does not address benefits that are underpaid. If the department issues an order that underpays benefits, the worker must ask the department to reconsider the order or must file an appeal with the Board of Industrial Insurance Appeals within 60 days. If a request for reconsideration or an appeal is not filed within the time period, the order is final and binding.

The Washington Supreme Court has held that the doctrine of claim preclusion applies to final orders of the department. The court stated that failure to appeal an order, even an order containing a clear error of law, precludes reargument of the same claim. Under the court's decision, final department orders may not be declared void unless the department lacked either personal or subject matter jurisdiction over the claim.

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**Summary of Bill:**

If the Department of Labor and Industries or a self-insured employer fails to pay industrial insurance benefits because of clerical error, mistake of identity, or innocent representation, the recipient of the benefits may request adjustment of the benefits. Adjustment must be requested within one year from the date of the incorrect payment or the claim is deemed waived. Adjustment may not be sought for adjudicator error, including failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 18, 1999.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The Department of Labor and Industries is permitted to recoup benefits that are overpaid, but when workers are underpaid benefits because of errors, they have no recourse if the appeal period has expired. This is unfair and must be corrected. Most workers are not represented in the early stages of their claim so that errors are not discovered. The calculation of benefits is difficult and most workers would not know if an error had been made. The problem is frequently related to incorrect wage information, sometimes because the worker has income from two jobs. This bill would provide the same one-year period for workers to recover underpaid benefits as the department has to recoup overpaid benefits. Although the concept in

the bill is understood, the language is imprecise. It may be necessary to define the terms used.

**Testimony Against:** None.

**Testified:** (In favor) Wayne Lieb, Washington State Trial Lawyers Association; Robby Stern, Washington State Labor Council; and Dan Sexton, Washington State Association of Plumbers and Pipefitters.

(In favor of concept) Clif Finch, Association of Washington Business.

(With concerns) Douglas Connell, Department of Labor and Industries.